

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KERRY WILLIAMS,

Plaintiff,

v.

No. CV 13-0627 JH/KBM

CHAVES COUNTY DETENTION CENTER, et al.,

Defendants.

ORDER TO SHOW CAUSE

This matter is before the Court *sua sponte*. By order entered on August 23, 2013 (Doc. 9), the Court required Plaintiff to make an initial partial payment towards the filing fee. Plaintiff then submitted two financial certificates and on September 13, 2013, he filed a notice of change of address (Doc. 12). It appears possible that Plaintiff did not receive a copy of the August 23 order. To date, the initial payment has not been received.

The Court based its calculation of the initial payment on financial exhibits attached to Plaintiff's amended motion for leave to proceed in forma pauperis (Doc. 8) showing deposits and positive balances in his account shortly before he filed his complaint. Since then, he has depleted his account, mostly by commissary purchases. There is no constitutional violation in requiring an inmate to choose between prison purchases and litigation. *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997). "[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he should not be excused for failing to pay the initial partial filing fee." *Baker v. Suthers*, 9 F. App'x 947, 949 (10th Cir. 2001). As Plaintiff has previously been advised, failure to comply with the Court's order and statutory requirements, or to show cause for excusing the failure, constitutes grounds for dismissing the complaint. *See id.* The Court will allow Plaintiff an additional fourteen days to comply with the

payment order or to show cause for excusing the failure.

IT IS THEREFORE ORDERED that, within fourteen (14) days from entry of this Order, Plaintiff make the previously ordered partial filing fee payment of \$7.82 or show cause why the complaint should not be dismissed.


UNITED STATES CHIEF MAGISTRATE JUDGE